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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 541.

ANNE VILBERT DE SAIRIGNE,
Petitioner,

against

FRANK JAY GOULD,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Opinion Below.

The opinion of the United States District Court for the Southern District of New York (Hon. Alfred C. Coxe, D. J.) is reported in 83 F. Supp. 270. Judgment thereon was entered March 16, 1949.

The Court of Appeals for the Second Circuit (L. Hand, C. J., Swan and Frank, JJ.) affirmed the decision of the District Court in open court at the conclusion of the oral argument. While there is no reported opinion, the decision of the Court of Appeals is reported at 177 F. 2d 515 (2d Cir. 1949) as follows:

> "PER CURIAM. Judgment affirmed, 83 F. Supp. 270, in open court."

Judgment was entered November 4, 1949.

Jurisdiction.

Jurisdiction is invoked by petitioner to review the order below under 28 U. S. C. §1254(1).

Statement of the Case.

The petition for certiorari submitted to this Court fails to contain any statement of this case, nor does it indicate the unique quality of petitioner's alleged causes of action. As permitted by Rule 27(4) of this Court, respondent's brief hereinbelow presents such statement.

The Complaint—The complaint, which alleges three causes of action, originally demanded judgment against the United States Trust Company of New York, in addition to the instant respondent, Frank Jay Gould. The third alleged cause of action (R. 6-7) related to the alleged claim against the Trust Company. That cause of action is of no importance herein, the defendant having been dismissed by order of the United States District Court for the Southern District of New York (Hon. John W. Clancy, D. J.) on December 6, 1948 and no appeal having been taken from such dismissal.

The first cause of action (R. 2-4) alleged that plaintiff (the instant petitioner) was a citizen of France; that defendant Gould was a citizen of the State of New York and the United States of America presently residing in France but having a business office in New York; that about February 20, 1944 defendant Gould in France delivered to plaintiff his check for $400,000 drawn on defendant Trust Company; that payment was refused by the Trust Company when the endorsed check was presented; and that "under the laws of France, where said check was made and delivered, the same constituted an undertaking or agreement

or admission between the parties • • • which took the place of and superseded any prior arrangement or agreement" and that, "by reason thereof, *under the laws of France, the defendant, Frank Jay Gould became obligated to pay* • • • *regardless of any prior agreement between the said parties, and that said obligation became binding in law even if the making and delivery of said check were a gratuitous payment or gift or intended as a gift.*" (Italics supplied.)

The second cause of action (R. 4-6) contained allegations similar to that of the first, but added thereto that defendant was, while residing in France, apprehensive of arrest by the German Occupation Armies and that plaintiff at Gould's instance and request gave him "shelter, asylum, comfort and protection in her home"; that Gould, "a man possessed of great wealth whose annual income was • • • in excess of Five hundred thousand ($500,000.00) dollars" informed plaintiff that he valued her services at $400,000 and agreed to pay such sum to plaintiff and gave her the check for $400,000 in discharge of such agreement; and that Gould, without justification, stopped payment on the check. This cause of action repeats verbatim the allegations of the first cause of action that "by reason thereof, *under the laws of France, the defendant, Frank Jay Gould became obligated to pay* • • • *regardless of any prior agreement between the said parties, and that said obligation became binding in law even if the making and delivery of said check were a gratuitous payment or gift or intended as a gift.*" (Italics supplied.)

In oral argument before the federal District Court, petitioner's attorney stressed this unique nature of both alleged causes of action, repeating that petitioner's claim was not, under either cause of action, premised on any doctrine of consideration, and that both causes looked to the *un-*

specified provisions of French law pursuant to which a check given gratuitously created a legally enforceable obligation, even though intended as a gift.

The Facts—On November 1, 1948, respondent Frank Jay Gould appeared generally in this action in the District Court for the Southern District of New York through his attorneys though neither he nor any authorized agent of his had been served with a copy of the summons or complaint (R. 23).

By order to show cause dated December 4, 1948, the instant respondent moved to dismiss the complaint on the grounds that an inconvenient forum had been chosen and that the complaint failed to state a claim* (R. 8-9).

This motion was granted "in all respects" by the District Court (R. 35). Reargument was denied (R. 45), and the Court of Appeals affirmed. It is this affirmance which petitioner here asks reviewed.

That petitioner is a citizen of France actually resident therein who has never resided in the United States is undisputed. The only occasions on which she has ever been in the United States have been visits of a highly temporary nature (R. 10).

It is equally undisputed that the alleged transactions upon which plaintiff predicates her claim took place, if they took place at all, in France (R. 3, 4-5).

Petitioner's claim purports to be predicated wholly and solely upon the law of France (R. 3-4, 5-6).

Respondent has, according to the petitioner's own papers, "resided in France almost continuously since 1913"

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* Neither in the opinion of the District Court nor in the colloquy before the Circuit Court was it found necessary to discuss the sufficiency of the complaint. The complaint was attacked below in respondent's briefs because of its complete failure to adequately allege the foreign law upon which it relies.

(R. 6). For reasons of his health he is unable presently to leave France (R. 10, 32, 44). Furthermore, respondent has extensive French holdings more than sufficient to satisfy any judgment which might there be rendered against him (R. 10-11, 16, 29), and is amenable to process in France (R. 10-11, 16, 33-34).

No sound reason for bringing this action in this country, rather than in France, has ever been indicated throughout the course of this action (R. 19, 32-33).

The District Court's Opinion—In dismissing the complaint herein on the ground that the forum chosen by the petitioner was an inconvenient one the District Court pointed out that the rights claimed in the complaint were alleged to exist, not under the laws of the United States nor any state thereof, but under the laws of France which laws were "quite different from, and inconsistent with, our laws" (R. 48).

The District Court noted that not only were aliens without any constitutional right to sue in the federal court, but that where relationships were entered into abroad and under foreign laws, wise judicial discretion would remit the parties to the place where the relationships arose, thus avoiding problems both in the conflict of laws and in the ascertainment of foreign law (R. 49-50).

The District Court disposed of the contention that Section 1404(a) of the New Judicial Code stripped the Court of its inherent power to deny jurisdiction as "plainly unsound" and unsupported by logic or by the language or history of the statute (R. 50-51).

The District Court stated further that New York Law did not govern (R. 51).

The Court of Appeals for the Second Circuit, in its colloquy with counsel during the oral argument and by its

decisive action in, without written opinion, affirming the judgment below in open court, emphatically showed its approval of the District Court's action.

Summary of Argument.

I. The petition should be denied, not alone because it is lacking in accuracy, brevity and clearness, but because no principles are presented the settlement of which is important to the public.

II. The action of the Circuit Court in affirming dismissal on grounds of *forum non conveniens* is in no way inconsistent with decisions of this Court.

III. The federal doctrine of *forum non conveniens* was properly applied and no error was made in interpreting local law.

ARGUMENT.

I.

The petition should be denied, not alone because it is lacking in accuracy, brevity and clearness, but because no principles are presented the settlement of which is important to the public.

The "Questions Presented" section of the petition as amplified by the petition's "Summary Statement of Matter Involved" may, generously construed, be read as supplying the "reasons relied on for the allowance of the writ" as is required by Rule 38(2) of this Court.

It is not, however, quite clear what the "reasons" are which petitioner relies upon.

The first "Question" insists that the Circuit Court's decision in affirming dismissal under *forum non conveniens* doctrine is in conflict with applicable decisions of this Court. The second "Question" seems to include two alleged "reasons"—both that the failure of the Circuit Court to look to State law was in conflict with this Court's decision in *Erie R. Co.* v. *Tompkins*, and that a question of local law has been decided in a way probably in conflict with applicable local decisions. The petition's "Summary Statement of Matter Involved" may possibly indicate a still further alleged error, an abuse of discretion by the courts below in the instant case, but this charge is not amplified nor is it supported by the citation of authorities of this or lower courts.

This much respondent's attorneys are able to cull from a careful reading of the petition. But respondent's attorneys, who have represented respondent since the instigation of this action (R. 23), are completely mystified by much of the material found in the petitioning papers.

Two things are clear, however, about the petition:

(1) The petition does not "present with studied accuracy, brevity and clearness" the grounds on which the petition for certiorari allegedly should be granted. This Court stressed this need for "accuracy, brevity, and clearness" in *Furness, Withy & Co.* v. *Yang-tsze Insurance Ass'n*, 242 U. S. 430, 434 (1917), and in *Southern Power Company* v. *North Carolina Public Service Co.*, 263 U. S. 508, 509 (1924). This petition, therefore, in its present form is an imposition on this Court and should not be entertained.

(2) The petitioner's papers do not advance a single argument, nor does any exist, which may indicate

why or how the review which petitioner here seeks may settle principles which are of importance to the public at large as distinguished from the parties now before this Court. Absent such principles, ordinarily this Court will not grant writs of certiorari. See *Layne & Bowler Corp.* v. *Western Well Works, Inc.*, 261 U. S. 387, 392-93 (1923); cf. *United States* v. *Rimer*, 220 U. S. 547 (1911).

Hence as the petitioner has failed to support his petition with any arguments of public interest, and as the petition is lacking in "accuracy, brevity and clearness," the petition should be denied.

II.

The action of the Circuit Court in affirming dismissal on grounds of *forum non conveniens* is in no way inconsistent with decisions of this Court.

Petitioner contends here, as he did without avail below, that Section 1404(a) of the New Judicial Code now compels the federal courts to retain his action—unique as it is in theory, based on alleged French law and between French residents, and allegedly stemming from actions which took place in France—though this action, if bona fide, could readily be the subject of a law suit in France where respondent is amenable to service and judgment.

Despite petitioner's contention, the irrelevancy of Section 1404(a) to this case appears clearly from all possible lines of authority—from the language of that Section, from that Section's legislative history and purpose, from the case law which has arisen under it, and from the commentaries of legal writers.

Nothing this Court has said gives any contrary indication.

The District Court, in dismissing this action, said that petitioner's contention that Section 1404(a) barred dismissal of this action was "plainly unsound" (R. 50).

The action of the Court of Appeals for the Second Circuit (L. Hand, C. J., Swan and Frank, JJ.) in affirming from the bench the action of the District Court was premised on arguments drawn from all these lines of authority, and it is amply justified by these authorities.

The Section in question, Section 1404(a) of the New Judicial Code (28 U. S. C. §1404(a)), provides:

> "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

The *language* of this Section provides only for the transfer of civil actions which might have been brought in other districts. There is no other district in which the instant action might have been brought. *Ergo,* this statute is completely without application.

The *legislative history and purpose* of this Section also show the petitioner's contention to be without merit. Petitioner's papers fail to indicate a single item in the legislative history of the Section which shows any intent to apply the Section to bar dismissals where the only proper forum is in a foreign land. On the contrary, in the very cases so heavily relied upon by petitioner, this Court indicated that the purpose of Section 1404(a)—as revealed in the history of that section—was in fact to prevent those impositions on the jurisdiction of federal courts which had previously been made under the protection of the special venue provisions

of certain federal statutes. See *Ex parte Collett*, 337 U. S. 55, 60-61, 71 (1949); *Kilpatrick* v. *Texas & Pacific R. Co.*, 337 U. S. 75, 77-78 (1949); *United States* v. *National City Lines*, 337 U. S. 78, 81-82 (1949); see also Reviser's Notes, *Title 28, U. S. Code Congressional Service* 1853 (1948). No such venue provisions are here involved.

The *case law*, especially the three cases (above cited) so heavily relied upon by petitioner, shows clearly that Section 1404(a) has had the effect of broadening, not narrowing, the field of application of the *forum non conveniens* doctrine by permitting any of the federal district courts to refuse to try any action the trial of which would be accompanied by considerable inconvenience, even though such court would formerly have had to retain such action.*

None of the three cases so heavily relied upon by petitioner holds that the doctrine of *forum non conveniens* is henceforth to be limited in federal courts to cases in which two or more federal districts are available. Nor is there any dictum of this Court or any of its members in the opinions in these cases to indicate that such is the effect to be given Section 1404(a).

The Court of Appeals for the Second Circuit and the District Court for the Southern District of New York are not alone in their affirmative determination that the pre-1948 doctrine of *forum non conveniens* is still very much a part of our federal law. In the Third Circuit, in *Cinema Amusements, Inc.* v. *Loew's, Inc.*, 85 F. Supp. 319, 322 (D. Del. 1949), District Judge Rodney stated that:

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*Though Section 1404(a) has thus broadened the *forum non conveniens* concept of discretionary refusal to exercise jurisdiction because of inconvenience which would attend were jurisdiction afforded, it provides a different and less drastic remedy—transfer rather than dismissal—in certain cases in which such transfer is feasible.

> "*Forum non conveniens* still exists independently from Section 1404(a), at least in connection with those cases instituted in federal courts when the more convenient forum is in a foreign jurisdiction."

To hold, as petitioner asks, that Section 1404(a) was intended to completely replace the older doctrine of *forum non conveniens* would lead to an absurd result. It seems clear that Section 1404(a) applies in admiralty. See *Untersinger* v. *United States*, 172 F. 2d 298, 301 (2d Cir. 1949); *Moore's Commentary on the U. S. Judicial Code* 207 (1949). Hence, if petitioner has his way, courts of admiralty might lose their long established discretionary power to refuse jurisdiction in cases where a foreign forum was more convenient.

The *commentaries of legal writers* on Section 1404(a) directly oppose petitioner's contention that this Section applies to bar dismissal in the instant case. Prior to the enactment of this Section it was anticipated that the new provision "would not apply to cases involving a foreign cause of action." See *Note*, 56 Yale L. J. 1234, 1249 (1947). Furthermore the doctrine of *forum non conveniens* was well established in our decisional law prior to the enactment of Section 1404(a). See Braucher, *The Inconvenient Federal Forum*, 60 Harv. L. Rev. 908 (1947); Blair, *The Doctrine of Forum Non Conveniens in Anglo-American Law*, 29 Col. L. Rev. 1 (1929). And there is no indication that Section 1404(a) was intended to excise from federal law this doctrine so well established.

Petitioner's contention that the action of the Court of Appeals for the Second Circuit conflicts with this Court's decisions in the *Collett* series of cases could not, as the action of the courts below and the arguments above indicate, possibly be more completely without merit. No seri-

ous question of law is raised which might serve as a basis on which this Court might grant certiorari.

Nor have the Courts below—as petitioner may seem to suggest—erred in the exercise of their discretion.

In a leading case on *forum non conveniens,* this Court recognized the broad area for the exercise of discretion in dismissing on grounds of *forum non conveniens.* See *Gulf Oil Corp.* v. *Gilbert,* 330 U. S. 501, 512 (1947). See also *Universal Adjustment Corporation* v. *Midland Bank, Ltd.,* 281 Mass. 303, 316, 184 N. E. 152, 159 (1933) [Rugg, C. J.].

Should this Court deem the instant petition to have raised any question of abuse of discretion, respondent, in opposing the petition, is content to rest on the opinion of the District Court (R. 46-51) which fully explains the sound grounds on which the district judge exercised his discretion and dismissed.

III.

The federal doctrine of *forum non conveniens* was properly applied and no error was made in interpreting local law.

As has been indicated, the second of the petition's "Questions Presented" confuses two separate questions of law. It will be assumed herein that petitioner intended to raise both of them.

A. The Courts Below Properly Looked to and Applied the Federal Doctrine of *Forum Non Conveniens.*

Petitioner places reliance on the rule in *Erie R. Co.* v. *Tompkins,* 304 U. S. 64 (1938), to urge that the federal courts cannot dismiss her essentially foreign and unique causes of action involving persons residing abroad, because

—allegedly—the complaint could not have been so dismissed by the state courts.

This Court has never expressly ruled on the applicability of the *Erie* doctrine to *forum non conveniens* question. But, though the doctrine of *forum non conveniens* was not before this Court in the case of *Guaranty Trust Co.* v. *York,* 326 U. S. 99, 106 (1945), this Court there said:

> "State law cannot define the remedies which a federal court must give simply because a federal court in diversity jurisdiction is available as an alternative tribunal to the State's courts."

This may be some indication of this Court's views as to the propriety of federal court application of federal *forum non conveniens* doctrine in declining the exercise of jurisdiction in diversity cases.

The *Erie* rule, analyzed in the light of its purpose, clearly does not prevent federal courts from dismissing diversity actions on the grounds of *forum non conveniens* in states in which the state courts could not likewise decline jurisdiction.

The *Erie* rule was intended to prevent discrimination against local citizens in favor of non-residents which had come about as a result of *Swift* v. *Tyson,* 16 Pet. 1 (U. S. 1842). This Court stated in *Woods* v. *Interstate Realty Co.,* 337 U. S. 535, 538 (1949), that a rule contrary to that of the *Erie* case would:

> "• • • create discriminations against citizens of the State in favor of those authorized to invoke the diversity jurisdiction of the federal courts. It was that element of discrimination that *Erie R. Co.* v. *Tompkins* was designed to eliminate."

The *Woods* case, *supra,* is one of the several recent decisions in which this Court held that the federal courts had

to apply state law to matters which, like *forum non conveniens*, might seem "procedural" were mechanical classifications utilized.* But these were all cases in which plaintiffs sought to utilize federal diversity jurisdiction to *avoid* state rules which would have deprived them of a remedy. In each such case this Court, to prevent the kind of discrimination referred to in the *Woods* case, held the *Erie* rule governing.

In the instant case petitioner has not seized on the availability of diversity jurisdiction to avoid the state *forum non conveniens* doctrine. Petitioner asserts that he would be entitled to sue in the state courts and claims, therefore, that the federal courts must grant similar relief. But the above authorities indicate that this contention cannot successfully look to the *Erie* rule for authority.

The case of *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U. S. 541 (1949), lends further support to the conclusion that the courts below, in looking to federal law and dismissing on grounds of *forum non conveniens*, did not offend against the *Erie* rule. This Court in that case referred to the provisions of Rule 23 of the Federal Rules of Civil Procedure which bars stockholders' actions in the federal courts by plaintiffs who were not stockholders at the time of the transactions of which they complain. This Court there said that this rule—pursuant to which a federal court "will not permit itself to be used," and will decline juris-

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* *Ragan* v. *Merchants Transfer & W. Co.*, 337 U. S. 530 (1949)—Tort action barred in federal court when summons served after state statute of limitations had run; *Woods* v. *Interstate Realty Co.*, *supra*—Contract action barred in federal court where the plaintiff had been doing business in the district in which the federal court was situated without qualifying under state law and where, therefore, the contract was unenforcible in the state court; *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U. S. 541 (1949)—Shareholder's derivative action barred in a federal court until plaintiff post bond as was required to institute action in state courts.

diction in certain cases—"may be observed by a federal court, even if not applicable in state court." *Cohen* v. *Beneficial Industrial Loan Corp., supra,* at 556.

It is inconceivable that any different analysis could be applied to the doctrine of *forum non conveniens* which is also an instance in which the federal court "will not permit itself to be used", even though the reasons that cause it to refuse are "not applicable in state court".

That federal *forum non conveniens* doctrine is or should be applied by federal courts in diversity cases is strongly and clearly urged in *Moore's Commentary on the U. S. Judicial Code* 201, 331 (1949) where it is stated that *forum non conveniens* is a "facet of venue", and

> "Because of that, because the doctrine affects the trial convenience of the federal courts and their dockets, and because of the mobility of the federal judiciary on a national scale, they should be independent of state doctrines of forum non conveniens, fashioned for courts operating on a state scale. Forum non conveniens is procedural and the new Code so treats it" (p. 331).

See also Braucher, *The Inconvenient Federal Forum,* 60 Harv. L. Rev. 908, 928 (1947).

It is thus clear that the District Court's dismissal of the instant unique action on grounds of *forum non conveniens* was not in violation of the *Erie* doctrine, and that the action of the Court of Appeals for the Second Circuit in affirming the dismissal below was proper.

B. Had the Present Action Been Brought in a New York Court Such Court Would Have Had Discretion to Dismiss.

As the Circuit Court's affirmance of the dismissal can rest soundly on the propriety of the application of federal

forum non conveniens doctrine, the question of local law—and any possible error in its determination—need not be considered by this Court in denying the petition. But in answer to the petition's suggestion that the Court of Appeals for the Second Circuit decided a question of local law—the applicability of the doctrine of *forum non conveniens* to cases of this kind—in a way probably in conflict with local decisions, this contention will be briefly analyzed.

Though there is a general rule that the courts of New York have no discretion to dismiss actions arising out of commercial transactions wherever they took place, *Wertheim* v. *Clergue*, 53 App. Div. 122, 125-6, 65 N. Y. Supp. 750, 753 (1st Dept. 1900), this rule is not without exceptions. In *Marshall* v. *Sherman*, 148 N. Y. 9, 42 N. E. 419 (1895), where the alleged cause of action was of a type not recognized in New York, the New York Court of Appeals ordered the dismissal of an action brought against New York residents*, though the alleged cause of action arose out of commercial relationships. See also *Gregonis* v. *Philadelphia & Reading C. & I. Co.*, 235 N. Y. 152, 161, 139 N. E. 223, 226 (1923); *Cohn* v. *Mishkoff Costello Co.*, 256 N. Y. 102, 105, 175 N. E. 529, 530 (1931).

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* Similarly the federal courts have not held that local ties provided by technical concepts of domicile, citizenship and "doing business" bar application of the doctrine of *forum non conveniens*. This Court has indicated dismissal is proper though defendants are qualified to do business in the dismissing forum. See *Gulf Oil Corp.* v. *Gilbert, supra; Koster* v. *Lumbermens Mutual Casualty Co.*, 330 U. S. 518 (1947). Nor is citizenship a factor to be considered on a motion involving *forum non conveniens*. *Douglas* v. *New York, N. H. & H. R.R. Co.*, 279 U. S. 377, 385-87 (1929); *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698, 704 (1942). In *Makela* v. *Wilson Transit Co.*, D. Del., Feb. 17, 1949, an action was transferred—on *forum non conveniens* grounds—away from the domicile of the defendant.

Were petitioner's claim of a commercial nature, as it is premised on laws which are "quite different from, and inconsistent with, our laws" (R. 48), it might well be found to be within that group of commercial claims over which the New York Courts will not feel compelled to exercise their jurisdiction.

But the instant complaint is not based on claims of a commercial nature. Both causes of action allegedly exist solely because of respondent's check which, though "a gratuitous payment or gift or intended as a gift" allegedly creates a binding obligation under French law. This is stated in the complaint (R. 4, 6) and was affirmed by petitioner's counsel in the District Court. Such alleged causes of action are certainly not "commercial" in nature, nor do they seem "contractual" as that term is used in our law.

But should petitioner's causes of action be liberally regarded as contractual in nature, respondent notes that the New York courts wrote no opinion in *Terry* v. *Williams*, 253 App. Div. 890 (1st Dept. 1938), so heavily relied upon by petitioner in support of his argument that New York courts lack discretion to dismiss such actions. The record in that case, as elucidated in petitioner's brief (p. 13), indicates that the contract there involved, unlike that in the instant case, well might be deemed to be of a commercial nature. Moreover, petitioner's statement that "the distinction between commercial and non-commercial *contract* cases was valiantly pressed" has, in a thorough search of the record of that case, been found to be completely without support.

Hence existing New York authority indicates that the state courts have discretion to dismiss actions analogous to the instant one.

The language of the New York Court of Appeals in the tort action of *de la Bouillerie* v. *de Vienne*, 300 N. Y. 60, 89 N. E. 2d 15 (1949), cited in petitioner's brief (p. 15), should be read in the light of the facts of that case, which are clearly distinguishable from ours. There the defendants were physically present in the United States, where they had taken out their first citizenship papers and were presumably remaining for the purpose of acquiring United States citizenship, and process was served upon them personally in the State of New York. Incidentally one of the defendants held a license from the United States Treasury decontrolling her funds in this country. The fair inference is that the defendants could not have been readily served outside the State of New York. By contrast, in the instant case, as appears from the Record (R. 44):

> "Finally, plaintiff's counsel specifically admits that the defendant Frank Jay Gould is presently sojourning in France. He does not deny that Gould is there for purposes of his health; that the condition of his health is such that his doctors advise it will be impossible for him to journey to New York in the foreseeable future; and that he has been sojourning in France for many years. Nor does the plaintiff deny that she can obtain jurisdiction over Gould in France and that there he is possessed of more than sufficient assets to satisfy any judgment she might obtain."

Furthermore, there may soundly be a different state rule as to dismissal on grounds of inconvenience in cases where parties willingly enter into the relationship which allegedly gave rise to their cause of action, and in cases like the tort action of *de la Bouillerie* v. *de Vienne, supra*, where that is not so. As Mr. Justice Holmes noted in *Cuba R.R. Co.* v. *Crosby*, 222 U. S. 473, 480 (1912):

> "• • • it should be remembered that parties do not enter into civil relations in foreign jurisdictions in reliance upon our courts. They could not complain if our courts refused to meddle with their affairs and remitted them to the place that established and would enforce their rights."

As the action of the Circuit Court does not conflict with local decisions, this alleged basis for certiorari too must fail.

Conclusion.

We respectfully submit that the petition is improper in form because of its lack of clarity, and that it not only presents no questions of public interest but that it fails to show any possible error of law in the decision of the Court of Appeals for the Second Circuit.

The writ of certiorari sought by the petitioner should not, therefore, be issued.

Respectfully submitted,

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